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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,343	10/15/2001	J Eric Mowat	5693P005	5512

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NETWORK APPLIANCE/BLAKELY
12400 WILSHIRE BLVD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

EXAMINER

BILGRAMI, ASGHAR H

ART UNIT	PAPER NUMBER
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2143

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/981,343

Applicant(s)

MOWAT, J ERIC

Examiner

Asghar Bilgrami

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-48 are rejected under 35 U.S.C. 102(e) as being anticipated by
O'Rourke et al (U.S. 6,986,018 B2)

3. As per claims 1, 5, 15, 20, 23, 26, 31, 32, 34, 37, 41 & 42 O'Rourke disclosed a network caching device to operate within a defined cache hierarchy on a network, the caching device comprising: a cache to store content from an origin server on the network; an application to receive a request for content from a client via the network, and to forward the request on the network based on a set of forwarding rules in the event of a cache miss (col.5, lines 43-56); a user interface to enable a user to specify and modify the set of forwarding rules (col.2, lines 23-33 & col.2, lines 51-67); a rule encoder to encode into a uniform syntax forwarding rules specified by the user (col.2, lines 23-57); a rules database to store the encoded forwarding rules (col.4, lines 10-22); a rule evaluator to evaluate the set of forwarding rules sequentially in response to the

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cache miss, to identify a rule in the set of forwarding rules which applies to the request, by identifying a correspondence between a variable in the request and a variable in the rule, the rule specifying a host within the cache hierarchy as a forwarding destination for the request; and a rule engine to determine an availability of the host and to select the host as said forwarding destination for the request if the host is available, the rule engine further to indicate the host to the application layer if the host is available to cause the application layer to attempt to establish a connection with the host, such that the application layer forwards the request to the host upon successfully establishing the connection (col.8, lines 5-23, lines 51-67, col.9 & col.10, lines 1-4).

4. As per claims 2, 16 & 40 O'Rourke disclosed a device as recited in claim 1, wherein the device operates within a defined forwarding hierarchy, and the user may specify one or more of the forwarding rules to indicate a manner of forwarding the request within the forwarding hierarchy (col.4, lines 10-22 & col.8, lines 5-23).

5. As per claims 3, 17, 24 & 35 O'Rourke disclosed a device as recited in claim 2, wherein the forwarding hierarchy is a cache hierarchy (col.5, lines 43-56).

6. As per claims 4, 18, 19, 25 & 36 O'Rourke disclosed a device as recited in claim 3, further comprising a cache to store content requestable by a client on the network, wherein the request processing unit forwards the request only in the event of a cache

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miss, wherein the request is a request for content on the network ((col.4, lines 10-22 & col.8, lines 5-23).

7. As per claims 6, 21, 27 & 28 O'Rourke disclosed an intermediary network node as recited in claim 26, wherein the rule evaluator identifies the rule, which applies to the request by determining that a condition in the rule is satisfied ((col.4, lines 10-22 & col.8, lines 5-23).

8. As per claims 7, 38 & 39 O'Rourke disclosed a method as recited in claim 37, further comprising, if said attempting to establish the connection is unsuccessful: determining whether a second available host is indicated in the rule, and if so, attempting to establish a connection to the second available host; and forwarding the request to the second available host (col.4, lines 10-22 & col.8, lines 5-23).

9. As per claims 8, 33 & 29 O'Rourke disclosed a device as recited in claim 1, wherein said rule comprises a plurality of destinations, and wherein the rule engine selects a destination from among the plurality of destinations as a forwarding destination for the request, based on at least one delivery factor included in the rule ((col.4, lines 10-22 & col.8, lines 5-23).

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10. As per claim 9 O'Rourke disclosed a device as recited in claim 8, wherein the at least one delivery factor comprises a specified distribution method for the request (col.4, lines 10-22 & col.8, lines 5-23).

11. As per claim 10 O'Rourke disclosed a device as recited in claim 8, wherein the at least one delivery factor comprises an indication of a current load on at least one of the destinations (col.423-33).

12. As per claim 11 O'Rourke disclosed a device as recited in claim 8, wherein the at least one delivery factor comprises a weighting of the plurality of destinations indicating a preferred distribution of forwarding requests between the plurality of destinations (col.4, lines 10-22 & col.8, lines 5-23).

13. As per claims 12, 13, 14, 16, 22, 30 & 43 O'Rourke disclosed a device as recited in claim 1, wherein the user interface is further to enable the user to specify a sequence in which the rules of the set of forwarding rules are evaluated in response to the request (col.4, lines 10-22 & col.8, lines 5-23).

14. As per claims 44, 46, 47 & 48 O'Rourke disclosed a method as recited in claim 34, further comprising, prior to said forwarding the request: acquiring information about the forwarding destination, the information being indicative of a responsiveness of the forwarding destination; computing a timeout period based on the information indicative

of the responsiveness of the following destination; and using the computed timeout period, in the request, in attempting to establish a connection with the forwarding destination (col.4, lines 10-22 & col.8, lines 5-23).

Response to Arguments

15. Applicant's arguments filed November 27, 2006 have been fully considered but they are not persuasive.

16. Applicant argued that O'Rourke does not disclose selecting a destination to which to forward a request based on a rule that applies to the request.

17. As to applicant's argument O'Rourke in the background section of the disclosure mentions that need of flexible architecture that allows a common cache server to be configured by a user by selecting and applying various set of policies to the cache server (col.2, lines 23-33). Further in the summary section O'Rourke describes those set of policies (rules) to include a policy to for distributing (forwarding) media content in response to a media content request from a user (col.2, lines 50-67). Therefore O'Rourke clearly describes the argued limitation.

Further more when reviewing a reference the applicants should remember that not only the specific teachings of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. In re Preda, 401 F. 2d 825, 159 USPQ 342 (CCPA 1968) and In re Shepard,

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319 F. 2d 194, 138 USPQ 148 (CCPA 1963). Skill in the art is presumed. In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985). Furthermore, artisans must be presumed to know something about the art apart from what the references disclose. In re Jacoby, 309 F. 2d 513, 135 USPQ 317 (CCPA 1962). The conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Every reference relies to some extent on knowledge of persons skilled in the art to complement that is disclosed therein. In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).

18. Applicant argued that other independent and dependent claims recite the similar limitation and O'Rourke does not have this limitation.

19. As to applicant argument the examiner states that the O'Rourke anticipates all independent and dependent claims that are presented by the applicant to include the argued limitation. Please see applicant's response on line 16 of this office action.

20. Finally Examiner advises the applicant to incorporate more details regarding the rule(s) or any other aspect of the invention that are derived from the specification into the independent claim language to further proceed the application in positive direction.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

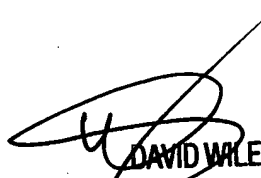
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asghar Bilgrami whose telephone number is 571-272-3907. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3924. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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